



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 14, 2010

Mr. Warren M. S. Ernst  
Chief of the General Counsel Division  
City of Dallas  
1500 Marilla, Room 7BN  
Dallas, Texas 75201

OR2010-10436

Dear Mr. Ernst:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 386670.

The City of Dallas (the "city") received a request for the calendar of a named councilmember for the month of April 2010, as well as all e-mails involving the named councilmember and his staff during April 2010. You state you will release some of the requested information to the requestor. You claim portions of the submitted information are not subject to the Act; alternatively, you claim this information is excepted from disclosure under sections 552.136 and 552.139 of the Government Code. Additionally, you claim the remaining submitted information is excepted from disclosure under section 552.107 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.<sup>1</sup>

You state the information submitted as Exhibit B is not subject to disclosure under the Act. The Act is applicable to "public information," which consists of

information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

(1) by a governmental body; or

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<sup>1</sup>We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

(2) for a governmental body and the governmental body owns the information or has a right of access to it.

Gov't Code § 552.002(a). In Open Records Decision No. 581 (1990), this office determined that certain computer information, such as source codes, documentation information and other computer programming, that has no significance other than its use as a tool for the maintenance, manipulation, or protection of public property is not the kind of information that is made public under section 552.021. See ORD 581 at 6 (construing predecessor statute). You contend the username and password information in Exhibit B is not public information, as defined by section 552.002. Based on your representation and our review of the information at issue, we agree the information in Exhibit B is not public information for the purposes of section 552.002, and thus this information is not subject to disclosure under the Act. See Gov't Code § 552.021. Therefore, the information in Exhibit B need not be released in response to this request for information.<sup>2</sup>

Section 552.107(1) of the Government Code protects information coming within the attorney-client privilege. When asserting the attorney-client privilege, a governmental body has the burden of providing the necessary facts to demonstrate the elements of the privilege in order to withhold the information at issue. Open Records Decision No. 676 at 6-7 (2002). First, a governmental body must demonstrate that the information constitutes or documents a communication. *Id.* at 7. Second, the communication must have been made "for the purpose of facilitating the rendition of professional legal services" to the client governmental body. TEX. R. EVID. 503(b)(1). The privilege does not apply when an attorney or representative is involved in some capacity other than that of providing or facilitating professional legal services to the client governmental body. *In re Tex. Farmers Ins. Exch.*, 990 S.W.2d 337, 340 (Tex. App.—Texarkana 1999, orig. proceeding) (attorney-client privilege does not apply if attorney acting in a capacity other than that of attorney). Governmental attorneys often act in capacities other than that of professional legal counsel, such as administrators, investigators, or managers. Thus, the mere fact that a communication involves an attorney for the government does not demonstrate this element. Third, the privilege applies only to communications between or among clients, client representatives, lawyers, and lawyer representatives. TEX. R. EVID. 503(b)(1). Thus, a governmental body must inform this office of the identities and capacities of the individuals to whom each communication at issue has been made. Lastly, the attorney-client privilege applies only to a *confidential* communication, *id.*, meaning it was "not intended to be disclosed to third persons other than those to whom disclosure is made in furtherance of the rendition of professional legal services to the client or those reasonably necessary for the transmission of the communication." *Id.* 503(a)(5).

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<sup>2</sup>As our ruling is dispositive for this information, we need not address your remaining arguments against its disclosure.

Whether a communication meets this definition depends on the intent of the parties involved at the time the information was communicated. *Osborne v. Johnson*, 954 S.W.2d 180, 184 (Tex. App.—Waco 1997, no pet.). Moreover, because the client may elect to waive the privilege at any time, a governmental body must explain that the confidentiality of a communication has been maintained. Section 552.107(1) generally excepts an entire communication that is demonstrated to be protected by the attorney-client privilege unless otherwise waived by the governmental body. See *Huie v. DeShazo*, 922 S.W.2d 920, 923 (Tex. 1996) (privilege extends to entire communication, including facts contained therein).

You assert that Exhibit C consists of a confidential communication among city attorneys, a city councilmember, and city staff. You further state the communication was made in furtherance of the rendition of professional legal services to the city, and that the confidentiality of this communication has been maintained. You have also identified all parties to the communication. Based on your representations and our review of the information at issue, we agree that Exhibit C consists of a privileged attorney-client communication that the city may withhold under section 552.107 of the Government Code.

In summary, the information in Exhibit B is not public information subject to disclosure under the Act and need not be released in response to this request for information. The city may withhold Exhibit C under section 552.107 of the Government Code.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Adam Leiber  
Assistant Attorney General  
Open Records Division

ACL/tp

Ref: ID# 386670

Enc. Submitted documents

c: Requestor  
(w/o enclosures)